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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

MARK ANTHONY WORTHY,

Defendant and Appellant.

2d Crim. No. B238461
(Super. Ct. No. TA118921-01)
(Los Angeles County)

Mark Anthony Worthy appeals a judgment following conviction of arson of property of another, and dissuading a witness from reporting a crime, with findings of a prior serious felony strike conviction. (Pen. Code, §§ 451, subd. (d), 136.1, subd. (b)(1), 667, subd. (a), 667, subds. (b)-(i), 1170.12, subds. (a)-(d).)¹ We modify the judgment to impose an additional \$30 court facilities assessment pursuant to Government Code section 70373, subdivision (a)(1), but otherwise affirm.

FACTS AND PROCEDURAL HISTORY

In 2011, Pamela Carter and her children lived in a duplex residence on East 99th Street in Los Angeles. Carter and Worthy had dated for several months, but Carter ended the relationship. Following the breakup, Worthy persisted in contacting Carter, and sent her 219 text-messages. Carter's residence and vehicle also suffered vandalism, including a broken bedroom window and paint thrown on her vehicle.

¹ All further statutory references are to the Penal Code unless stated otherwise.

On June 20, 2011, Carter visited the courthouse to obtain a restraining order against Worthy. In her absence, neighbors Deven and Deshun Dobbins saw Worthy ride his bicycle in the alley behind Carter's residence. Worthy stopped at the garage behind the residence, reached over the gate with both hands, and "put[] something over the gate." When he saw the Dobbins brothers watching him, he appeared "surprise[d]" and "frightened." Worthy then rode away on his bicycle.

Within a short time, the Dobbins brothers heard a voice shouting "Fire." They saw smoke and flames rising from the back of Carter's garage. Neighbors and firefighters soon extinguished a fire in a mattress and other property behind Carter's garage.

As the firefighters were leaving, Worthy returned and stood near Carter's residence. Deven Dobbins stood nearby and spoke to Carter's son, Ishmael. Worthy then stated to Deshun Dobbins, "You better tell him to stay out of my business, because I play with guns." Worthy looked toward Deven Dobbins as he made the statement and made a hand gesture as if he were loading or firing a gun. Worthy then rode away.

At trial, Worthy testified and denied vandalizing Carter's property or setting the fire behind her garage. He also denied stating the threat to Deshun Dobbins or making a gun-related gesture.

The jury convicted Worthy of arson of property of another (count 1), and dissuading a witness from reporting a crime (count 2). (§§ 451, subd. (d), 136.1, subd. (b)(1).) In a separate proceeding, Worthy admitted that he suffered a prior serious felony strike conviction for robbery. (§§ 211, 667, subd. (a), 667, subds. (b)-(i), 1170.12, subds. (a)-(d).) The trial court sentenced Worthy to a nine-year prison term, imposed a \$200 restitution fine, a suspended \$200 parole revocation restitution fine, an \$80 court security fee, and a \$30 court facilities assessment (count 1). (§§ 1202.4, 1202.45, 1465.8, subd. (a)(1); Gov. Code, § 70373, subd. (a)(1).) The court awarded Worthy 223 days of presentence custody credit.

Worthy appeals and contends that insufficient evidence supports his conviction of dissuading a witness from reporting a crime. (§ 136.1, subd. (b)(1).) The

Attorney General responds and adds that the trial court erred by not imposing an additional \$30 court facilities assessment for count 2, pursuant to Government Code section 70373, subdivision (a)(1).

DISCUSSION

I.

Worthy argues that there is insufficient evidence that he specifically intended to dissuade Deven Dobbins from making a report to law enforcement. (*People v. Prieto* (2003) 30 Cal.4th 226, 268-269 [dissuading a witness is a specific intent crime].) He points out that his statement did not refer to a complaint or cooperation with law enforcement. Worthy asserts that the only reasonable inference from his statement is that he meant to dissuade Deven from informing Carter regarding the fire's origins. He rests his argument upon the federal and California constitutional commands of due process of law.

In reviewing the sufficiency of evidence to support a conviction, we examine the entire record and draw all reasonable inferences therefrom in favor of the judgment to determine whether there is reasonable and credible evidence from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Streeter* (2012) 54 Cal.4th 205, 241.) Our review is the same in prosecutions primarily resting upon circumstantial evidence. (*Ibid.*) "An appellate court must accept logical inferences that the jury might have drawn from the evidence even if the court would have concluded otherwise." (*Ibid.*) Our review does not redetermine the weight of the evidence or the credibility of witnesses. (*People v. Albillar* (2010) 51 Cal.4th 47, 60.)

Section 136.1, subdivision (b)(1) punishes a person who "attempts to prevent or dissuade another person who has been . . . [a] witness to a crime from . . . : [¶] . . . Making any report of that victimization to any peace officer or state or local law enforcement officer" The crime of intimidating a witness requires proof that the defendant specifically intended to dissuade a witness. (*People v. Young* (2005) 34 Cal.4th 1149, 1210.)

Sufficient evidence and all reasonable inferences therefrom establish that Worthy specifically intended to dissuade Deven Dobbins from reporting his observations to law enforcement. Worthy knew that the Dobbins brothers saw him reach over Carter's fence and start a fire – he was "surprise[d]" and "frightened" when he saw them observing him. Worthy looked toward Deven Dobbins when he made the statement and gun gesture. At the time of his statement to Dobbins, firefighters were leaving the scene and fire investigators had not yet arrived. Carter previously had obtained a restraining order against Worthy and was obtaining a second restraining order the day of the fire. Section 136.1 does not contain a "talismanic requirement" that the defendant use the express words "do not tell the police" or "do not testify." (*People v. Thomas* (1978) 83 Cal.App.3d 511, 514.) Considering Worthy's statement and gesture and the attendant circumstances, the judgment is supported by sufficient evidence.

II.

The Attorney General correctly points out that the trial court erred by not imposing a \$30 court facilities assessment for count 2. (Gov. Code, § 70373, subd. (a)(1).) Worthy concedes that the court erred by not imposing that additional assessment. (*People v. Crabtree* (2009) 169 Cal.App.4th 1293, 1328.)

The judgment is modified to impose an aggregate \$60 court facilities assessment pursuant to Government Code section 70373, subdivision (a)(1), but otherwise affirmed. The trial court shall amend the abstract of judgment accordingly and forward the amended abstract to the Department of Corrections and Rehabilitation.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Michael Shultz, Commissioner
Superior Court County of Los Angeles

Cindy Brines, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, James William Bilderback II, Supervising Deputy Attorney General, Mark E. Weber, Deputy Attorney General, for Plaintiff and Respondent.